In Re Holocaust Victim Assets Litigation regarding the Application of Bu...uborne for counsel fees Doc. 68

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Hon. James Orenstein
Magistrate Judge
United States District Court
for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *In re Holocaust Victim Assets Litig.*
Application of Burt Neuborne - CV-06-983 (ERK)(JO)

Dear Judge Orenstein:

I wish to inform the Court of a recent Second Circuit decision that has direct bearing on the inquiries before this Court. As the Court will recall, one of the issues left open after the last status conference was the proper method of calculating the discount (assuming there was to be one) that might be applied as a result of the lower overhead of Professor Neuborne. Various methodologies were discussed and the final agreement was that the parties would attempt to stipulate to the amount that would be reflected under each method, while leaving open to argument whether any discount should be had and, if so, what would be the proper methodology to calculate the discount.

Since that time, however, the Second Circuit has issued an opinion which rejects the idea of an overhead discount and directs (in our view, once again) that the proper calculation of the hourly rate for purposes of computing a lodestar is the market equivalent of the services by other comparably credentialed counsel. I direct the Court's attention to *McDonald et al v. Pension Plan of the NYSA-ILA Pension Trust Fund et al.*, Nos. 05-1435-cv(L) *et seq.*, issued on June 6, 2006. In particular, the Court's attention is directed to Page 8, n. 6 of the slip opinion, in which the Second Circuit states: "We want to caution, however, that district courts should not treat an attorney's status as a solo practitioner as grounds for an automatic reduction in the reasonable hourly rate." The Court emphasizes that "[o]verhead is not a valid reason for why attorneys should be awarded a higher or lower hourly rate." The Circuit emphasizes that rates are set by market comparisons and that "it would be error to use an attorney's status as a solo practitioner as an automatic deduction or shortcut for determining the reasonable hourly rate."

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In light of this controlling ruling, it appears that the instruction from Judge Korman to compute the proper discount based on Professor Neuborne's status as a solo practitioner with lower overhead is now foreclosed by intervening Circuit law. Accordingly, on behalf of Professor Neuborne, I would submit that there is no longer a legal basis for continuing this line of inquiry. I would ask that the parties be relieved of any obligation to spend more time and resources in further pursuit of this inquiry, absent some direct guidance from this Court. While we have been operating under Judge Korman's instructions on this point, those are now superseded as a matter of law by an intervening decision from the Circuit.

Sincerely,

/s/

Samuel Issacharoff

cc: Samuel J. Dubbin, P.A.
Robert A. Swift